

REMARKS

In response to the above-identified Office Action (“Action”) and Advisory Action (“Advisory”), Applicant traverses the Patent Office’s rejection to the claims and seeks reconsideration thereof. Claims 33-35 and 37, 38, 40-69 are now pending. Claims 49-56 remain withdrawn. Claims 33-35, 37, 38, 40-48 and 57-59 are allowed. Claims 60-69 are rejected. In this response, claims 60, 62, 64 and 67-69 are amended, no claims are cancelled and no claims are added.

I. Claim Amendments

Claim 60 is amended to replace the term “fluid conduit” with “liquid conduit” and claims 62, 64 and 67-69 are amended for consistency with claim 60. Support for the amendments to claims 60, 62, 64 and 67-69 may be found, for example, on page 7, lines 8-10. Applicant respectfully submits the amendments do no more than conform the claim language to the manner in which Applicant believes the term “fluid” in the rejected claims has been interpreted by the Applicant and the Patent Office in the previous Office Actions. In particular, Applicant argued in the previous responses that the fluid conduit is a conduit for liquids not air and the Examiner asserted that fluids such as reagents (e.g. liquids) flow through the alleged fluid conduit 20 if the container is flipped over. See Action, page 3. Applicant believes the amendments place the claims in condition for allowance without requiring further search by the Examiner. Applicant therefore respectfully requests consideration and entry of the amendments to claims 60, 62, 64 and 67-69 after final.

II. Claim Rejections – 35 U.S.C. §102

In the outstanding Action, claims 60-69 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,854,486 issued to Daley (“Daley”). Applicant respectfully traverses the rejection.

In regard to independent claim 60, Applicant respectfully submits Daley fails to teach at least the elements of “a first longitudinally extending cylindrical ring defining an interior area;

a longitudinally extending liquid conduit positioned within the interior area and defining a liquid flow aperture” as recited in amended claim 60.

Daley generally discloses a liquid delivery system for dispensing liquids from an inverted container. See Daley, col. 1, lines 11-13. The Patent Office alleges Daley teaches a first longitudinally extending cylindrical ring 6, a second cylindrical ring 5, a fluid conduit 11, 13 and 20 and a laterally extending wall 1. See Action, pages 2-3. Although Daley teaches that tube 20 is an **air conduit**, the Patent Office alleges in the Advisory that a fluid is a liquid or gas therefore the air conduit 20 of Daley may be characterized as a fluid conduit.

Daley teaches that as liquid flows out of bottle 3, air enters the air inlet entrance 12, passes through the air inlet exit 11 into vent entrance 9, then into vent tube 20 and out vent exit 15 into bottle 3. See Daley, col. 2, lines 64-68. Vent exit 15 is in fact intentionally positioned above a level of liquid 4 in bottle 3 of Daley to prevent any sort of communication between tube 20 and liquid within bottle 3. See Daley, col. 2, lines 44-45. Thus, air conduit 20 is specifically designed for, and limited to, the transport of air.

The Patent Office alleges in the Action that conduit 11, 13, 20 is a fluid (liquid or gas) conduit if container 3 of Daley is flipped over. See Action, page 3. The Patent Office’s modification of Daley to teach a conduit for transport of a fluid such as a liquid, however, evidences Daley’s failure to expressly or inherently describe this element. In particular, to establish anticipation, each and every element of the claimed combination must be found within a single prior art reference. Thus, for at least the reason that Daley must be modified to teach each and every element of claim 60, the Patent Office has not met its burden of showing anticipation.

Applicant further directs the Examiner’s attention to *In re Gordon*, 221 USPQ 1125 (Fed. Cir. 1084) in which the Federal Circuit reversed the Board’s finding of obviousness based on a similar modification of the primary reference. In particular, in *In re Gordon*, the Board concluded that claims directed to a blood filter assembly were obvious in view of a prior art reference that disclosed the claimed elements if the reference was turned upside down. The court reversed the finding on the basis that if the prior art were flipped over it would be inoperable for

its intended purpose and therefore may not be relied upon to render the claims obvious. See MPEP § 2143.01(V).

Similarly, here, flipping container 3 of Daley over so that a liquid flows through conduit 20 would render Daley inoperable for its intended purpose. In particular, if container 3 of Daley were flipped over, liquid could no longer flow out of container 3. Moreover, if liquid were to flow into air conduit 20, air could no longer flow through the conduit thereby inhibiting liquid flow out of container 3. As previously discussed, as liquid flows out of container 3 through liquid outlets 14, air flows into container 3 through conduit 20. One of ordinary skill in the art would recognize that if this exchange of liquid and air is not maintained, a vacuum will be created within the space between the liquid and container 3 which will eventually prevent liquid from flowing out of container 3.

Thus, for at least the foregoing reasons, Daley fails to teach at least this element of claim 60. Since Daley fails to teach each and every element of claim 60, anticipation may not be established. Applicant respectfully requests reconsideration and withdrawal of the rejection of claim 60 under 35 U.S.C. §102 over Daley.

In regard to dependent claims 61-69, claims 61-69 depend from claim 60 and incorporate the limitations thereof. Thus, for at least the reasons that claim 60 is not anticipated by Daley, claims 61-69 are further not anticipated by the prior art. Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 61-69 under 35 U.S.C. §102 over Daley.

III. Allowable Subject Matter

Applicant acknowledges with appreciation the Examiner's allowance of claims 33-35, 37, 38, 40-48 and 57-59.

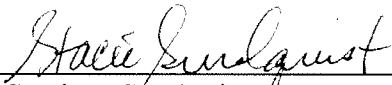
CONCLUSION

In view of the foregoing, it is believed that all claims now pending, namely claims 33-35, 37, 38 and 40-69, are now in condition for allowance and such action is earnestly solicited at the earliest possible date. If there are any additional fees due in connection with the filing of this response, please charge those fees to our Deposit Account No. 02-2666. Questions regarding this matter should be directed to the undersigned at (310) 207-3800.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR, & ZAFMAN LLP

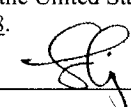
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CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being submitted electronically via EFS Web to the United States Patent and Trademark Office on January 29, 2008.


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